106 FERC ¶ 61, 336
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Great Lakes Gas Transmission Limited Partnership   Docket No. RP04-188-000

ORDER ACCEPTING TARIFF SHEETS
SUBJECT TO CONDITION

(Issued March 31, 2004)

1. On February 27, 2004, Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed revised tariff sheets to modify its existing creditworthiness provisions and to establish provisions to govern the termination of a capacity release transaction. Great Lakes states that these tariff revisions are necessary to reduce the financial risk caused by non-creditworthy customers, while protecting all shippers from unduly burdensome creditworthiness requirements.

2. In this order, the Commission accepts Great Lakes' proposed tariff sheets, subject to modification. This decision benefits customers by permitting Great Lakes to implement reasonable tariff provisions that will ensure that its shippers have the financial ability to pay for the pipeline services they use.

Background and Details of the Filing

3. In response to the current market environment and concerns about the ongoing financial viability and creditworthiness of many industry participants, Great Lakes proposes to revise its tariff's creditworthiness provisions to reduce the financial risk to itself and its creditworthy customers.[1] Among its revisions, Great Lakes proposes to revise its tariff to: (1) base collateral requirements on three months' worth of service

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[1] See Appendix for a list of the revised tariff sheets.

charges; (2) provide for written notice to an existing shipper upon determining that such shipper is no longer creditworthy; (3) provide timelines and procedures applicable to delinquencies and the deterioration of credit; and (4) enhance the criteria that it will employ to determine a shipper's creditworthiness. Great Lakes requests that its proposed tariff sheets become effective on April 1, 2004.

4. In addition, Great Lakes proposes to establish a new provision to permit the termination of a capacity release transaction when it terminates the releasing shipper's service agreement. Under such a provision, Great Lakes could terminate a replacement shipper's contract after 30 days written notice to the shipper if: (1) Great Lakes terminates the releasing shipper's service agreement due to its failure to maintain creditworthiness; and (2) the rate paid by the replacement shipper under its agreement is less than the rate the releasing shipper paid under the terminated agreement. However, Great Lakes proposes that the replacement shipper may avoid termination if the replacement shipper agrees to pay the lower of: (1) the releasing shipper's contract rate; (2) the applicable maximum tariff rate; or (3) a mutually agreed upon rate for the remaining term of the replacement shipper's agreement.

5. Great Lakes also proposes to update and make other conforming changes to its tariff to insure consistency among the tariff sections. Additionally, Great Lakes proposes to consolidate its creditworthiness provisions into a new section 26 in the General Terms and Conditions of its tariff, rather than continuing to maintain similar creditworthiness provisions in multiple rate schedules.

6. Ultimately, Great Lakes believes that its proposed tariff revisions are consistent with Commission precedent and policy. Great Lakes states that, if accepted, these revisions will give Great Lakes and its creditworthy customers a comparable level of financial risk protection to that afforded other pipeline companies and their customers.

Public Notice and Interventions

7. Public notice of Great Lakes' filing was issued on March 3, 2004. Interventions and protests were due as provided in section 154.210 of the Commission's regulations. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2003)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Consumers Energy Company (CECo) and SEMCO Energy Gas Company (SEMCO) also filed comments.

Comments and Discussion

8. In numerous recent orders, the Commission previously examined issues relating to a pipeline's ability to determine the creditworthiness of its shippers.[2] Upon review of Great Lakes' tariff filing, the Commission finds that its proposal generally complies with our recent decisions and our evolving policy pertaining to creditworthiness issues in the industry. Notwithstanding, the Commission recognizes the concerns raised by CECo and SEMCO and finds that Great Lakes' proposal does not entirely conform to the Commission's policy. Accordingly, the Commission accepts Great Lakes' proposed tariff sheets, subject to further revisions, as discussed below.

Creditworthiness Determination

9. SEMCO argues that Great Lakes' proposal sets an arbitrarily high hurdle for achieving creditworthiness and provides the pipeline with too much discretion in determining whether a customer is creditworthy. SEMCO contends that proposed section 26.1 unreasonably ties a number of provisions together, requiring the shipper to satisfy all of the provisions in order to be deemed creditworthy. These provisions include the requirement that: (1) the shipper provide verification that the lower of its senior unsecured debt rating or issuer rating is investment grade or better; (2) the expected level of credit to be provided is less than 15% of the shipper's adjusted tangible net worth; and, (3) the shipper's credit history and outlook "is determined to be acceptable by Transporter."

10. SEMCO contends that the third requirement, that the shipper's credit history and outlook "is determined to be acceptable by Transporter," provides Great Lakes with unfettered discretion and is too vague, especially in light of the fact that the shipper may already have an investment grade credit rating. Instead, SEMCO believes that Great Lakes' tariff should contain clear standards for determining whether a shipper is deemed creditworthy. Additionally, SEMCO states that as a threshold matter, if the shipper possesses an investment grade credit rating, then the pipeline should automatically deem it creditworthy.

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[2] Additionally, in a recently issued Notice of Proposed Rulemaking, the Commission proposed to amend its regulations to require pipelines to follow standardized procedures for determining the creditworthiness of its shippers. See Creditworthiness Standards for Interstate Natural Gas Pipelines, 69 Fed. Reg. 8,587 (Feb. 25, 2004), FERC Stats. & Regs., Proposed Regulations ¶ 32,573 (2004). Great Lakes' proposals are consistent with the proposals in the NOPR, except as discussed below.

11. CECo and SEMCO also note that the proposed tariff language provides no mention of the treatment of entities which do not have a debt rating or issuer rating. SEMCO states that if a shipper does not have a rating, Great Lakes should consider additional factors such as the customer's payment history or the likelihood of default when determining whether a shipper is ultimately creditworthy. Additionally, CECo states that while Great Lakes' proposed creditworthiness determination would adjust a shipper's tangible net worth to reflect issues of liquidity, asset management and debt management, the tariff language fails to specify how such considerations impact tangible net worth.

12. The Commission has found that credit evaluation standards must be objective and transparent, and we have consistently denied tariff language that is unnecessarily vague and subject to interpretation.[3] Great Lakes' existing tariff allows a shipper to be deemed creditworthy if its request for credit is less than 15% of its total net worth and: (1) the shipper's credit history is determined to be acceptable to the pipeline; or (2) the shipper's debt rating is investment grade or better. Thus, under the existing tariff, a shipper is deemed creditworthy if its request for credit is less than 15% of its total net worth and the shipper's debt rating is investment grade or better. No further evaluation by the pipeline is necessary.

13. Great Lakes proposes to modify its tariff by requiring that even where the shipper satisfies the 15% test and has an investment grade credit rating, the pipeline would review the shipper's creditworthiness. In effect, Great Lakes replaces the "or" in its existing tariff with an "and."

14. Great Lakes' fails to justify this change in its tariff. Although the Commission permitted pipelines to deem a shipper creditworthy if the shipper has an investment grade credit rating and the level of requested credit that is less than 15% of the shippers tangible net worth,[4] Great Lakes has failed to justify its proposal to then subject the shipper to its own determination of whether the shipper's credit and financial history is acceptable. The 15% test together with the investment grade rating is objective, and Great Lakes has not shown a need to include a further subjective element to the analysis. Since Great

[3] See e.g., Tennessee Gas Pipeline Co., 105 FERC ¶ 61,120 at P 34 (2003), Northern Natural Gas Co., 102 FERC ¶ 61,076 at P 33 (2003), and Gulf South Pipeline Co., LP, 103 FERC ¶ 61,129 at P 22 and 32 (2003).

[4] See Natural Gas Pipeline Co. of America, 106 FERC ¶ 61,175 at P 69-74 (2004).

Lakes also fails to sufficiently explain or justify this proposal we direct Great Lakes to revise its tariff accordingly.[5]

15. As noted by the interveners, proposed section 26.1(B) does not explain how an entity that does not possess a credit rating could ever demonstrate its creditworthiness. The Commission finds that Great Lakes' tariff lacks such a provision and therefore directs Great Lakes to provide such a provision, or explain why it has not included such a provision. Finally, the Commission agrees with CECo that Great Lakes fails to clearly explain how a shipper's tangible net worth is adjusted to reflect issues of liquidity, asset management and debt management. Great Lakes must revise proposed section 26.1(B) its tariff to provide for such an explanation.

Timelines

16. SEMCO argues that Great Lakes' proposed timelines are unclear and contrary to Commission precedent. For example, SEMCO notes that if Great Lakes requests a customer to update its credit information pursuant to section 26.5(A), it is unclear how long the shipper has to provide such information. Additionally, SEMCO contends that providing 48 hours notice before suspending service, as proposed in section 26.2(E), does not provide the shipper with adequate time to provide Great Lakes with the requested information or additional collateral. SEMCO suggests that Great Lakes should provide 15 days notice (from the date the pipeline first informs the shipper that additional information or collateral is necessary) prior to suspending service.

17. The Commission finds that Great Lakes' filing does not specify the length of time a shipper may have to respond to its request for additional credit information. In prior cases, the Commission found that requiring a shipper to provide such information in less that five business days is unreasonable.[6] Accordingly, we direct Great Lakes to revise section 26.5 to provide its shippers with a minimum of five business days in which to respond to a request for additional information.

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[5] Great Lakes may consider revising its tariff to provide that a shipper can demonstrate creditworthiness by meeting the requirements of section 26.1(B)(1) and 26.1(B)(2), <u>or</u> be subject to an <u>objective</u> creditworthiness determination.

[6] <u>Id</u>. at P 59.

18. The Commission, however, does not agree with SEMCO that 48 hours notice prior to suspending a shipper's service for failure to provide requested information or collateral is unreasonable. Pursuant to Great Lakes' proposed timeline in section 26.2, a non-creditworthy shipper will have five business days to provide payment for one month of service and an additional 30 days to provide collateral based on three months' worth of service charges. Accordingly, since Great Lakes will provide its shippers with a minimum of five business days to submit either additional information or collateral, the Commission finds that the provision to provide a final 48 hours prior notice is not objectionable since this exceeds the Commission's requirements. This is because our current policy does not require that pipelines provide notice prior to suspending service upon a shipper's default – when a shipper fails to satisfy the pipeline's creditworthiness requirements, the pipeline may suspend its service immediately.

19. CECo states that Great Lakes should allow a shipper, required under section 26.2(D) to prepay for one month of service within five business days after becoming non-creditworthy, to provide some form of collateral to the pipeline, apparently in lieu of the prepayment. However, the Commission, in an attempt to strike a reasonable balance between the pipeline's legitimate need to obtain security and the shipper's need for a sufficient time to arrange for such security, developed the now familiar timeline where a non-creditworthy shipper must pay for one month's of service within five business days, and then will have an additional 30 days to arrange collateral for three months' of service charges.[7] CECo provides no explanation why the Commission should now deviate from its precedent to allow shippers to substitute collateral for a payment. Accordingly, CECo's request is denied.

Charges for Service During Suspension

20. SEMCO states that while the proposed tariff revisions provide Great Lakes with the ability to suspend a customer's service, the tariff does not specifically state that the pipeline will not collect any reservation charges during a suspension period. SEMCO requests that the Commission direct Great Lakes, consistent with its prior decisions, to include such a provision in its tariff to protect shippers from incurring charges during a suspension of service.

[7] Northern Natural Gas Co., 102 FERC ¶ 61,076 at P 49 (2003).

21. The Commission required other pipelines to revise their tariffs to provide that shippers are not responsible for payment of reservation charges when a pipeline suspends a shipper's service.[8] We agree with SEMCO that it is not clear from Great Lakes' tariff whether the pipeline intends to charge a shipper when it suspends service. Thus consistent with our prior rulings, we direct Great Lakes to revise its tariff to clarify that shippers are not responsible for reservation charges after its service is suspended.

Request for Publicly Available Information

22. Proposed section 26.5(B) requires that shippers provide Great Lakes with copies of its audited financial statements and its annual report on a yearly basis. SEMCO and CECo find that such a requirement is unnecessary and burdensome. SEMCO states that since these reports are already publicly available, if the pipeline needs or desires to examine them, all this proposed provision does is add an extra administrative burden on Great Lakes' customers.

23. The Commission finds that, notwithstanding the fact that such information is publicly available, it will not be unduly burdensome for Great Lakes' customers to provide the pipeline with a set of financial statements and its annual report on a yearly basis. Accordingly, we will require Great Lakes customers to provide such information directly to the pipeline, as proposed in section 26.5(B) of its tariff.

Ambiguous Terminology

24. CECo states that Great Lakes' use of the term "U.S. Federal Funds" in its tariff is ambiguous and undefined. The Commission agrees that this undefined term is confusing and directs Great Lakes to either modify this term everywhere it appears in its tariff, or explain what this term means. Additionally, CECo states that section 26.5(A) refers to "working days" and questions whether Great Lakes intended to mean "business days." The Commission also agrees that the use of this term is confusing and directs Great Lakes to either modify this term or explain what this term means.

25. Accordingly, for the reasons discussed above, the Commission directs Great Lakes to file revised tariff sheets to incorporate the necessary changes within 30 days of the date of this order issues.

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[8] See Gulf South Pipeline Co., LP, 103 FERC ¶ 61,129 at P 56 (2003); and Tennessee Gas Pipeline Co., 102 FERC ¶ 61,075 at P 32 (2003).

The Commission orders:

(A) The Commission accepts, subject to condition, the tariff sheets listed in the Appendix, to be effective April 1, 2004, as discussed in the body of this order.

(B) Great Lakes is hereby directed to file revised tariff sheets within 30 days of the date this order issues, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

APPENDIX

Great Lakes Gas Transmission Limited Partnership
FERC Gas Tariff, Second Revised Volume No. 1

Tariff Sheets Conditionally Accepted, Effective April 1, 2004:

Fifteenth Revised Sheet No. 1
Fourth Revised Sheet No. 21
Sixth Revised Sheet No. 22
Tenth Revised Sheet No. 40
Eighth Revised Sheet No. 40A
Second Revised Sheet No. 44
Original Sheet No. 50R
Original Sheet No. 50S
Original Sheet No. 50T
Second Revised Sheet No. 56
Fourth Revised Sheet No. 57
First Revised Sheet No. 57K
First Revised Sheet No. 57L
Fourth Revised Sheet No. 61
Second Revised Sheet No. 62
Third Revised Sheet No. 63G
First Revised Sheet No. 63H
Second Revised Sheet No. 68
First Revised Sheet No. 69